IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.413 OF 2007

Chagan Narhar Pingale ...Appellant

vs.

Sumanbai Kashinath Dashpute ...Respondent

Mr.N.A.Dube Patil i/b Mr.Ajay Misar for the Appellant
Mr.Tushar Sonawane i/b Mr.M.M.Sathaye for the Respondent.

CORAM: A.S.OKA,J.
DATE : DECEMBER 19,2007.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the original defendant against whom the trial court has passed a decree for specific performance. The decree has been confirmed in Appeal by the District Court.

2. The only submission of the Advocate for the Appellant is that the trial court had framed an issue of limitation and the Appellate Court has not dealt with the said issue. He submits that the suit was clearly barred by limitation.

3. I have considered the submissions. In paragraph 5 of the Judgment of the Appellate court the submissions made by the Advocate for the Appellant before the Appellate court have been summarised. I find that there was no challenge to the finding recorded by the trial court on the issue of limitation before the Appellate Court. The learned Advocate for the

Appellant submitted that issue of limitation was raised in the Memorandum of Appeal filed before the Appellate Court. However, I find from the Judgment of the Appellate Court that no argument was made on the issue of limitation and there was no challenge to the finding recorded by the trial court on the said issue. It is pertinent to note that it is not even the case made out in the Memorandum of Appeal of this Second Appeal which is filed in the year 2003 that the issue of limitation was agitated before the Appellate Court and the Appellate Court has not decided the same.

4. In view of this factual position, no substantial question of law arises. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

5. Decree shall not be executed for a period of three months from today.

JUDGE